

1 **UNITED STATES DISTRICT COURT**  
2 **DISTRICT OF NEVADA**

3 ARMADA CONCRETE, LLC, )  
4 )

5 Plaintiff, )

6 vs. )

Case No.: 2:14-cv-02176-GMN-GWF

**ORDER**

7 JAYNES CORPORATION; WESTERN SURETY )  
8 COMPANY, )

9 Defendants. )  
10

11 JAYNES CORPORATION, )

12 Third-Party Plaintiff, )

13 vs. )

14 LIBERTY MUTUAL INSURANCE COMPANY, )

15 Third-Party Defendant. )  
16

17 JAYNES CORPORATION, )

18 Counter Claimant, )

19 vs. )

20 ARMADA CONCRETE, LLC, )

21 Counter Defendant. )  
22

23 Pending before the Court is the Motion for Relief from Judgment, (ECF No. 146), filed  
24 by Plaintiff Armada Concrete, LLC, and Third-Party Defendant Liberty Mutual Insurance  
25 Company (“Liberty Mutual”)<sup>1</sup> (collectively “Armada”). Defendants Jaynes Corporation and

<sup>1</sup> Liberty Mutual is Armada’s bonding company. (See Order 2:1 n.1, ECF No. 143).

1 Western Surety Company (“WSC”)<sup>2</sup> (collectively “Jaynes”) filed a Response, (ECF No. 151),  
2 and Armada filed a Reply, (ECF No. 153).

3 Also pending before the Court is the Motion to Amend Judgment, (ECF No. 148), filed  
4 by Armada. Jaynes filed a Response, (ECF No. 152), and Armada filed a Reply, (ECF No.  
5 154). For the reasons discussed herein, Armada’s Motion for Relief is **GRANTED in part** and  
6 **DENIED in part**, and Armada’s Motion to Amend is **DENIED**.

7 **I. BACKGROUND**

8 The instant Motions arise from the Court’s bench trial that concerned a contract dispute  
9 between Armada and Jaynes. Specifically, Armada filed its Complaint on December 22, 2014,  
10 asserting the following causes of action against Jaynes: (1) recovery on its Miller Act bond; (2)  
11 breach of contract; (3) breach of the implied covenant of good faith and fair dealing; and (4)  
12 unjust enrichment. (Compl. ¶¶ 17–47, ECF No. 1). On January 30, 2015, Jaynes filed a Third-  
13 Party Complaint, (ECF No. 10), against Liberty Mutual for payment on its bond. That same  
14 day, Jaynes filed its Counterclaim, (ECF No. 11), against Armada asserting the following  
15 claims: (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing;  
16 and (3) payment on the bond. (*Id.* ¶¶ 5–27).

17 On May 15, 2017, the Court began a ten-day bench trial, which concluded on June 9,  
18 2017, (*see* ECF Nos. 115–19, 121–23, 135–36). On August 17, 2017, the Court issued its  
19 Findings of Fact and Conclusions of Law where it found the following. (ECF No. 143).<sup>3</sup> In  
20 June 2011, the United States Army Corps of Engineers (the “Corps”) issued a Solicitation,  
21 Offer, and Award to Jaynes as the design build contractor for construction of the Fire Crash  
22 Rescue Station at Creech Air Force Base (the “Project”). (*Id.* 2:15–18). On September 5, 2012,

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24 <sup>2</sup> WSC is Jaynes’ bonding company. (*See* Order 2:2 n.2)

25 <sup>3</sup> A more complete description of the events can be found in the Court’s Findings of Fact and Conclusions of Law and will not be fully repeated here. (*See* Order 2:14–19:23).

1 Armada submitted a proposal to Jaynes to complete concrete installations for the Project. (*Id.*  
2 3:1–2). Jaynes and Armada entered into an agreement (the “Subcontract”), which incorporated  
3 other documents that provided the terms of the parties’ agreement (the “Contract Documents”).  
4 (*Id.* 3:15–19, 4:7–11). Pursuant to the Subcontract, Armada agreed to install slab-on-grade in  
5 Area A and Area B of the Project, to provide sloped slab, to furnish the layout and equipment  
6 as necessary to complete the saw cutting of the required control joints, and to place Type II for  
7 the building slab following the laying of underground utilities by other subcontractors on the  
8 Project. (*Id.* 3:20–25).

9 Under the parties’ agreement, Armada was to commence work on October 8, 2012, and  
10 complete its work by approximately March 21, 2013. (*Id.* 3:15–4:25). Due to delays Jaynes  
11 suffered unrelated to Armada’s performance, Armada was not able to begin work until  
12 November 5, 2012. (*Id.* 5:1–4). Jaynes directed Armada to establish a cold weather plan and  
13 lighting plan so that Armada could work during the colder weather and shorter-day lengths. (*Id.*  
14 5:15–23). Jaynes further ordered Armada to re-sequence its work and perform in an  
15 accelerated manner. (*Id.* 6:23–25). Due to having to work during the colder weather and  
16 Jaynes’ re-sequencing directive, Armada incurred increased costs that were not anticipated  
17 under the parties’ Subcontract and Contract Documents. (*Id.* 5:23–25, 6:23–25). In light of  
18 these costs, Armada provided timely notice of its delay and impact damages to Jaynes under the  
19 Subcontract and retained SDC & Associates (“SDC”), a construction claims firm, to tabulate  
20 Armada’s itemized damages. (*Id.* 6:11–14).

21 On February 14, 2013, Jaynes advised Armada that the placement of the Area B slab  
22 would be delayed to allow Jaynes’s masonry subcontractor to accelerate its work. (*Id.* 7:14–16).  
23 As a consequence of the masonry subcontractor’s out-of-sequence installation of a wall  
24 surrounding Area B, Armada’s work on this slab became much more difficult. (*Id.* 7:21–24).  
25 Pursuant to the Contract Documents, Armada was required to saw cut within the same day that

1 Armada poured the slab-on-grade. (*Id.* 8:5–7). Armada placed the slab-on-grade on March 14,  
2 2013, and performed the saw cutting on March 15, 2013. (*Id.* 8:23–25). When Jaynes arrived  
3 on-site the morning of March 15, 2013, numerous cracks had already formed on the slab-on-  
4 grade prior to Armada’s saw cutting. (*Id.* 10:1–5). The Corps rejected Armada’s work on Area  
5 B and directed Jaynes to remove and replace the slab-on-grade. (*Id.* 10:19–20, 11:3–4). Jaynes  
6 notified Armada it was in breach of the Subcontract because its work was deemed defective by  
7 the Corps, and Jaynes instructed Armada to remove and replace the Area B slab-on-grade at its  
8 own expense. (*Id.* 11:8–12). Armada refused to do this, asserting that the issues with the Area  
9 B slab-on-grade were the result of Jaynes’s directive to deviate from the original plan. (*Id.*  
10 11:11–12, 11:15–18). Jaynes retained a new subcontractor to remove and replace Armada’s  
11 rejected slab. (*Id.* 11:19–20).

12 At the end of the trial, the Court concluded that both Armada and Jaynes breached the  
13 Subcontract. (*Id.* 20:1–8). Specifically, the Court ordered that judgment be entered against  
14 Jaynes and in favor of Armada on Armada’s claims for recovery on the bond, breach of  
15 contract, and breach of the implied covenant of good faith and fair dealing. (*Id.* 20:1–4). The  
16 Court further ordered that judgment be entered against Armada and in favor of Jaynes on  
17 Jaynes’s counterclaim for recovery on the bond, breach of contract, and breach of the implied  
18 covenant of good faith and fair dealing. (*Id.* 20:5–8).

19 With respect to Armada’s damages, the Court concluded that Jaynes caused 188 days of  
20 delay to Armada’s work on the Project. (*Id.* 15:18–20). Relevant to the instant Motions, the  
21 Court awarded Armada the following relief: \$3,530.00 in costs incurred due to additional  
22 equipment rentals; \$9,665.05 in cold weather protection costs; and \$31,251.28 in additional  
23 labor costs due to cold weather protection. (*Id.* 16:3–17). The Court further found that Armada  
24 incurred \$104,835.00 in costs paid to SDC to compile its damages, but Armada was not entitled  
25 to this total in light of the actual costs incurred due to the delays. (*Id.* 16:18–23). Instead, the

1 Court applied a 20% fee to the costs for added concrete placements in Area A, materials and  
2 equipment used due to cold weather, cold weather and out-of-sequence work inefficiencies, and  
3 extended field overhead costs. (*Id.* 16:23–17:2). This added up to \$22,845.71. (*Id.*). Further, in  
4 light of the 188-day delay for which the Court found Armada was not at fault, the Court  
5 concluded that Armada was entitled to \$31,034.90 in field supervision costs and additional  
6 equipment costs at a rate of \$206.10 per day. (*Id.* 17:3–8). This added up to \$38,746.80, over  
7 the 188-day period. (*Id.* 17:6–8). Pursuant to the express terms of the Subcontract, the Court  
8 also found that “Armada is entitled to 10% overhead and 5% profit on all additional cost and  
9 expenses incurred as a consequence of the delay and disruption it suffered from Jaynes’ actions  
10 or inactions.” (*Id.* 17:12–16). The Court concluded that “Armada is entitled to these amounts  
11 applied to the costs for added concrete placements in Area A, materials and equipment used  
12 due to cold weather, and cold weather and out-of-sequence work inefficiencies, amounting to  
13 \$1,318.86 of overhead and \$2,222.34 of profit.” (*Id.* 17:16–20).

14 Moreover, the Court found that Armada’s failure to timely saw cut the Area B slab-on-  
15 grade caused cracks that were unacceptable to the Corps and inconsistent with outside industry  
16 standards. (*Id.* 18:7–10). The Court determined that the Corps was justified under the Contract  
17 Documents to reject the slab and require its removal and replacement. (*Id.* 18:17–18).  
18 Accordingly, the Court found that Armada breached the duty of good faith and fair dealing by  
19 “failing to perform pursuant to the Subcontract and Contract Documents, failing to install a  
20 compliant and acceptable slab-on-grade in Area B, and failing to remove and replace the  
21 deficient slab in Area B.” (*Id.* 18:24–19:2). In light of this conclusion, the Court awarded  
22 Jaynes \$287,999.17 in damages for the cost incurred to remove and replace the slab-on-grade in  
23 Area B. (*Id.* 19:11–12). Because of this judgment, Armada filed the instant Motions on  
24 September 14, 2017. (*See* Mot. for Relief, ECF No. 146); (Mot. to Am., ECF No. 148).

## **II. MOTION FOR RELIEF FROM JUDGMENT**

### **A. Legal Standard**

Under Federal Rule of Civil Procedure 60(a), “[t]he court may correct a clerical mistake or a mistake arising from oversight or omission whenever one is found in a judgment, order, or other part of the record.” Fed. R. Civ. P. 60(a). “In determining whether a mistake may be corrected under Rule 60(a), our circuit focuses on what the court originally intended to do.” *Tattersalls, Ltd. v. DeHaven*, 745 F.3d 1294, 1297 (9th Cir. 2014) (internal citation and quotation marks omitted). “The basic distinction between ‘clerical mistakes’ and mistakes that cannot be corrected pursuant to Rule 60(a) is that the former consist of ‘blunders in execution’ whereas the latter consist of instances where the court changes its mind.” *Id.* (quoting *Blanton v. Anzalone*, 813 F.2d 1574, 1577 n.2 (9th Cir. 1987)).

### **B. Discussion**

In its Motion for Relief, Armada argues that the Court’s Order on its Findings of Fact and Conclusions of Law contains three clerical mistakes that should be corrected to accurately reflect the Court’s award to Armada. (Mot. for Relief 7:2–3, ECF No. 146). Armada asserts that the Court erred with the following: Conclusion of Law No. 22, relating to Armada’s overhead cost and profit calculation; Conclusion of Law No. 21, pertaining to Armada’s extended equipment costs; and Conclusion of Law No. 20, regarding Armada’s costs for retaining SDC to calculate its damages. (*Id.* 2:3–10). The Court will address each alleged error in turn.

#### ***i. Conclusion of Law No. 22***

Armada argues that the “dollar value contained in Conclusion of Law No. 22 does not accurately state the applicable percentage calculation the Court describes.” (*Id.* 7:6–7). Specifically, Armada states that because the Court awarded it \$114,228.03 in damages caused by Jaynes, Armada is entitled to 10% overhead and 5% profit based on that dollar amount,

1 which accounts for field supervision and additional equipment costs for the 188-day delay. (*Id.*  
2 7:8–11). Jaynes responds that the Court’s calculation of damages is supported by the record  
3 and that the Court explicitly found Armada was entitled to overhead and costs for only three  
4 discrete categories of damages “which total \$44,446.33, not \$114,228.03 as Armada contends.”  
5 (Resp. 7:27–8:2, ECF No. 151).

6 The Court agrees with Armada that Conclusion of Law No. 22 was intended to include  
7 extended field supervision and additional equipment costs. The Court explicitly stated that  
8 Armada was entitled to overhead and profit on “*all* additional cost and expenses incurred as a  
9 consequence of the delay and disruption it suffered from Jaynes’ actions or inactions.” (Order  
10 17:12–16) (emphasis added). In the preceding Conclusion of Law, the Court awarded damages  
11 to Armada for field supervision and additional equipment costs for the 188-day delay period,  
12 for which the Court explicitly found “Armada was not at fault.” (*Id.* 17:3–5). The Court further  
13 awarded Armada damages for costs it incurred for hiring SDC, which factored in 20% of field  
14 supervision and additional equipment costs. (*Id.* 16:23–17:2). If the Court deliberately omitted  
15 extended field supervision and equipment costs because, as Jaynes argues, “Armada should not  
16 profit from delay for which it is partially responsible,” (Resp. 8:4–7), this would be inconsistent  
17 with the Court’s underlying award of damages to Armada in this category.

18 The Court hereby corrects Conclusion of Law No. 22 to include overhead and profit for  
19 extended field supervision and additional equipment costs. Specifically, Armada is entitled to  
20 10% overhead and 5% profit for added concrete placements in Area A, materials and  
21 equipment due to cold weather, cold weather and out-of-sequence work inefficiencies, and  
22 extended field overhead costs. The costs for these items, respectively, are \$3,530.00;  
23 \$9,665.05; \$31,251.28; and \$69,781.70, amounting to \$114,228.03. Therefore, Armada’s  
24 award for 10% overhead and 5% profit is corrected to be \$11,422.80, and \$5,711.40,  
25

1 respectively. Accordingly, Armada’s Motion for Relief, as it relates to Conclusion of Law No.  
2 22, is granted.

3 ***ii. Conclusion of Law No. 21***

4 Next, Armada argues that the Court erred with respect to the number of days Armada  
5 was required to maintain equipment at the Project site. (Mot. for Relief 7:13–9:4); (*see* Order  
6 17:3–5). According to Armada, “[t]here is nothing in the trial record supporting the statement  
7 in Conclusion of Law No. 21 that the extended equipment duration is 188 calendar days.” (*Id.*  
8 8:7–9). Jaynes responds that the Court considered Armada’s evidence that the total delay  
9 duration was 329 days and deliberately decided that Armada was only entitled to equipment  
10 costs for 188 days. (Resp. 5:11–22, ECF No. 151). In support of its argument, Jaynes asserts  
11 that the trial record provides a clear basis for a finding that Armada’s “equipment should have  
12 been removed, Armada failed to mitigate its damages, and leaving the very limited amount of  
13 small items on site was unreasonable.” (*Id.* 5:18–22).

14 The Court finds no clerical error in its conclusion concerning the number of delay days  
15 for which Armada was entitled to equipment costs. While Armada presented evidence of 329  
16 days of delay, (*see* Trial Tr. Eiman 78:25–79:3, ECF No. 133), Jaynes presented contrary  
17 evidence and argument that Armada was not entitled to damages for the time period for which  
18 the equipment was not being utilized. (*See, e.g., id.* 164:14–172:7); (Trial Tr. Gundrum 76:22–  
19 77:14, ECF No. 142); (*see also* Trial Tr. 91:5–13, ECF No. 137). Further, the Court explicitly  
20 questioned Armada’s witness as to why Armada’s equipment remained on-site from March  
21 2013 until March 2014. (Trial Tr. Eiman 80:19–22, 173:1–9, ECF No. 133). Therefore,  
22 contrary to Armada’s argument, the record supports the Court’s finding that Armada was  
23 entitled to the worth of equipment costs for 188 delay days rather than the extended duration of  
24 329 days. (Order 17:3–8). Because there was no clerical error in the Court’s conclusion,  
25 Armada’s Motion with respect to Conclusion of Law No. 21 is denied.



1                    ***iii. Conclusion of Law No. 20***

2            Armada contends that Conclusion of Law No. 20, in which the Court awarded Armada  
3 costs associated with hiring SDC to compile its claim for damages, must be corrected to reflect  
4 the Court’s adjusted damage award addressed *supra*. (Mot. for Relief 9:5–10).<sup>4</sup> Armada  
5 reasons that because this award category is a function of the Court’s award to Armada on the  
6 underlying claim, it must be modified to account for the Court’s clerical errors. (*Id.*). However,  
7 Armada’s requested correction is predicated on the Court finding a clerical error with respect to  
8 Conclusions of Law No. 21, discussed *supra*. Because the Court finds no clerical error  
9 regarding that damage award, the Court need not amend Conclusion of Law No. 20.<sup>5</sup>  
10 Therefore, Armada’s Motion for Relief as it pertains to Conclusion of Law No. 20 is denied.

11 **III. MOTION TO AMEND JUDGMENT**

12            **A. Legal Standard**

13            On a party’s motion under Rule 52(b), “the court may amend its findings—or make  
14 additional findings—and may amend judgment accordingly.” Fed. R. Civ. P. 52(b). Motions  
15 pursuant to this rule cannot be used to raise arguments which could have been raised prior to  
16 the issuance of judgment. *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 998 (9th Cir. 2001).

17            Under Rule 59(e), district courts have considerable discretion when considering a  
18 motion to amend a judgment. *Turner v. Burlington Northern Santa Fe R.R. Co.*, 338 F.3d  
19 1058, 1063 (9th Cir. 2003). There are four grounds upon which a Rule 59(e) motion may be  
20 granted: 1) the motion is necessary to correct manifest errors of law or fact upon which

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21  
22 <sup>4</sup> Armada also correctly asserts that the Court made a clerical error in its calculation of total days Armada was  
23 supposed to complete work as originally anticipated. (Mot. for Relief 8:11–15). The Court agrees and hereby  
24 corrects Armada’s expected project duration to be 165 calendar days, rather than 144 days as stated in the  
Court’s Finding of Fact No. 19. (*See* Order 4:20–25, ECF No. 143). However, this corrected number of expected  
project days does not alter the Court’s award of damages in the instant Order.

25 <sup>5</sup> Armada’s corrected damage award in Conclusion of Law No. 22 does not impact Armada’s award for costs  
associated with hiring SDC. As noted *supra*, the Court included 20% of extended field overhead costs in its  
award for damages incurred by Armada for its retention of SDC. (*See* Order 16:18–17:2).

1 judgment is based; 2) the moving party presents newly discovered evidence or previously  
2 unavailable evidence; 3) the motion is necessary to prevent manifest injustice; or 4) there is an  
3 intervening change in controlling law. *Id.* Motions under this Rule “should not be granted,  
4 absent highly unusual circumstances.” 389 *Orange St. Partners v. Arnold*, 179 F.3d 656, 665  
5 (9th Cir. 1995). A motion to amend judgment is not a vehicle permitting an unsuccessful party  
6 to reiterate arguments previously presented. *Taylor v. Knapp*, 871 F.2d 803, 805 (9th Cir.  
7 1989). Further, a “Rule 59(e) motion may *not* be used to raise arguments or present evidence  
8 for the first time when they could reasonably have been raised earlier in the litigation.” *Kona*  
9 *Enters., Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000) (emphasis in original).

## 10 **B. Discussion**

11 Armada moves the Court to “add findings of fact relating to the impacts upon Armada’s  
12 ability to perform in strict compliance with the project documents caused by Jaynes  
13 Corporation’s delays and directives during construction.” (Mot. to Am. 2:7–14, ECF No. 148).  
14 Armada asserts that while the Court accounted for the financial impacts of delays attributable to  
15 Jaynes’s acts and omissions, the Court did not account for the physical impacts of these acts  
16 and omissions. (*Id.* 3:3–19). Jaynes counters that Armada’s Motion must fail because it  
17 impermissibly reiterates the same arguments made by Armada at trial. (Resp. 2:9–19, ECF No.  
18 152). Jaynes further avers that Armada’s Motion also consists of new arguments, theories, and  
19 defenses that were never asserted at any time during this litigation, which is improper under  
20 Rule 59(e). (*Id.* 2:20–25).

21 Armada primarily argues that the Court did not adequately address the full impact that  
22 the re-sequencing of masonry work had on Armada’s ability to pour, place, finish, and saw cut  
23 Area B. (*Id.* 5:20–23). According to Armada, Jaynes knew Armada could not saw cut the  
24 remaining slabs in one day and that it was “impossible to strictly comply” with the Contract  
25 Documents in this regard. (*Id.* 6:18–22, 7:7–23). Further, Armada argues that the construction

1 of the masonry wall caused shadows that “prolonged the concrete curing time, particularly  
2 when the temperatures were already cold because of Jaynes’ delays and work sequence  
3 changes.” (*Id.* 6:11–13).

4 The evidence presented at trial, however, contradicts Armada’s assertions. The Court  
5 heard evidence that the Area B slab-on-grade was ready to be saw cut on March 14, 2013, the  
6 same day the concrete was poured. (Trial Tr. Gervasio 240:13–241:4, ECF No. 133); (Trial Tr.  
7 Purington 129:19–130:3, 130:8–131:17, ECF No. 132). With respect to the cold temperature’s  
8 impact on Armada’s work on Area B, John Crampton (“Crampton”), Armada’s owner and  
9 general manager, acknowledged at trial and in a letter dated May 6, 2013, that the weather was  
10 “mild and calm” on March 14, 2013, and that it played “no adverse role in the placement of the  
11 concrete.” (Trial Tr. Crampton 3-64:21–65:9, ECF No. 127). This evidence belies Armada’s  
12 repeated assertions that it was “physically prevented” from strictly complying with the Contract  
13 Documents with respect to the Area B slab-on-grade. (Mot. to Am. 4:22–24, 5:24–27, 6:13–  
14 16). In light of this evidence, the Court concluded that Armada was at fault for its failure to  
15 timely saw cut the Area B slab-on-grade. Therefore, there was no manifest error of law or fact  
16 in this conclusion.

17 Armada further argues that Finding of Fact No. 48 is inconsistent with the Contract  
18 Documents. (Mot. to Am. 6:23–7:6). In Finding of Fact No. 48, the Court stated “[i]t is not  
19 industry standard for slab-on-grade specifications to allow for cracking.” (Order 9:4–5).  
20 According to Armada, the Contract Documents acknowledge that cracking is contemplated and  
21 provide a repair protocol for when concrete cracks occur. (Mot. to Am. 7:4–6). The Court,  
22 however, agrees with Jaynes that Armada’s contentions are irrelevant to the Court’s finding.  
23 (Resp. 16:16–19). The existence of proposed solutions to cracking in the Contract Documents  
24 is immaterial to the Court’s findings with respect to industry standards.  
25

1           Next, Armada avers that Finding of Fact No. 55 “is incomplete and not supported by the  
2 evidence.” (Mot. to Am. 7:24). In this Finding of Fact, the Court stated that “[o]n June 6, 2013,  
3 Armada acknowledged that at least some cracks were outside acceptable tolerances.” (Order  
4 10:4–5). However, contrary to Armada’s argument, this was supported by the record and the  
5 Court cited to a June 6, 2013 letter written by Crampton and a portion of Crampton’s testimony  
6 in which he agreed there were sections of the Area B slab-on-grade that are “slightly outside”  
7 acceptable tolerances. (Trial Tr. Crampton 52:22–53:5, ECF No. 127); (*see also* Ex. 310.2).  
8 While Crampton’s letter also acknowledges that these cracks “do not appear to be structural in  
9 nature, but appear to be more surface and cosmetic,” Crampton also recognized in the letter that  
10 “[t]he owner may be concerned about appearance, long term durability, or structural integrity.”  
11 (Ex. 310.2); (Trial Tr. Crampton 53:7–15, ECF No. 127). Therefore, the Court rejects  
12 Armada’s contention that this finding is unsupported by the record.

13           Relatedly, Armada argues that Finding of Fact No. 60, in which the Court stated that the  
14 Corps “rejected the Area B slab-on-grade, primarily due to the cracks in the slab,” is inaccurate.  
15 (Mot. to Am. 8:4–5); (*see* Order 10:19–20). According to Armada, this Finding is inaccurate  
16 because the Corps letter cited by the Court “does not grade or prioritize the five (5) independent  
17 reasons it rejected the Area B slab-on-grade.” (Mot. to Am. 8:5–6); (*see also* Ex. 21.1–.3).  
18 While Armada takes issue with the Court’s finding that this was the primary reason for the  
19 Corps rejection, the prioritization of reasons for the Corps rejection of the Area B slab-on-grade  
20 has no impact on the Court’s conclusion. The Court found that the Corps was justified in  
21 rejecting the Area B slab-on-grade for what it determined to be unacceptable cracking. (Order  
22 18:14–21). As noted *supra*, Crampton explicitly noted that the presence of cracks might deem  
23 the Area B slab-on-grade unacceptable to the Corps. (Trial Tr. Crampton 53:7–15, ECF No.  
24 127). Crampton further acknowledged that the Corps had ultimate authority to reject the Area  
25

1 B slab-on-grade for this reason. (*Id.* 53:24–54:9). Therefore, the Court concludes that Finding  
2 of Fact No. 60 was not manifestly erroneous.

3 Based on the foregoing, Armada’s Motion to Amend fails to articulate errors of law or  
4 fact sufficient to justify the extraordinary remedy of amending judgment. *See Kona Enters.,*  
5 *Inc.*, 229 F.3d at 890. Accordingly, Armada’s Motion to Amend Judgment is denied.

6 **IV. CONCLUSION**

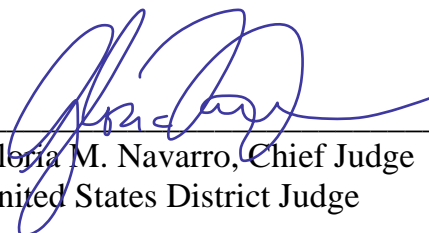
7 **IT IS HEREBY ORDERED** that Armada’s Motion for Relief, (ECF No. 146), is  
8 **GRANTED in part** and **DENIED in part**.

9 **IT IS FURTHER ORDERED** that Conclusion of Law No. 22, (*see* Order 17:16–20,  
10 ECF No. 143), is hereby corrected to reflect the following: Armada is entitled to 10% overhead  
11 and 5% profit for added concrete placements in Area A, materials and equipment due to cold  
12 weather, cold weather and out-of-sequence work inefficiencies, and extended field overhead  
13 costs, amounting to \$11,422.80 of overhead and \$5,711.40 of profit.

14 **IT IS FURTHER ORDERED** that Finding of Fact No. 19, (*see* Order 4:24–25, ECF  
15 No. 143), is hereby corrected to include the following: According to the Project Baseline  
16 Schedule, therefore, Armada’s total project duration was 165 days.

17 **IT IS FURTHER ORDERED** that Armada’s Motion to Amend Judgment, (ECF No.  
18 148), is **DENIED**.

19 **DATED** this 20 day of June, 2018.

20  
21   
22 \_\_\_\_\_  
23 Gloria M. Navarro, Chief Judge  
24 United States District Judge  
25